IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3872 OF 2002

Krishna Ram Jaikishan Vishnoi ...Applicant

Versus

State of Maharashtra & Ors ...Respondents

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Mrs. Teja Katdare i/b Mr. Nikhil Ved, Advocate for Applicant

Mr. R.V. Gangarkar i/b M/s. Patil and Gangarkar & Co. for Respondent Nos. 10 and 11.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 31ST AUGUST, 2005

P. C.:-

1. Leave to amend. Amendment to be carried out forthwith.

2. Heard the learned advocate for the applicant, the learned advocate for the respondent Nos. 10 and 11 and the learned A.P.P. for the State.

3. The applicant has preferred this application for return of property which was seized during the investigation of C.R. No. 78 of 2000 of Borivli police station. The said case is numbered as C.C. No. 906/RP/2001. The said case is pending before

the learned Metropolitan Magistrate, 43rd Court, Borivli, Mumbai.

4. It is the prosecution case that the complainant in the said case i.e. Devshankar Sharma and the present applicant were travelling together by train on 7.3.2000. They were carrying gold with them. The complainant and the applicant are friends. When they reached Borivli railway station, three persons came there pretending to be Custom Officers and they took the applicant and the complainant to some unknown place in a Taxi. Those so called Customs Officers took away the gold which the complainant and the applicant were carrying. Thereafter, the complaint came to be lodged by DevShankar Sharma at Borivli police.

5. It is the case of the applicant that the property was purchased by M/s. M.P. Bullion from Amrapali Industries Ltd. by three bills dated 6.3.2000. The applicant is working with M/s. M.P. Bullion. Thus, according to the applicant, the property belongs to M/s M.P. Bullions. During the course of investigation of this case, 54 gold biscuits came to be recovered. The applicant and the complainant preferred an application for return of property and 34 gold biscuits came to be handed over to the complainant and the applicant. This is an

application for return of remaining 20 gold biscuits to the applicant.

6. This case came to be transferred from Borivli railway police station to the State CID at Pune. In the present case, the receiver i.e. the respondent Nos. 10 and 11 i.e. accused Nos. 10 and 11 are also claiming the said property. The applicant had preferred an application before the learned Magistrate for return of property. The said application came to be rejected. The learned Magistrate has observed that Borivli police has no objection if those 20 biscuits are handed over to the applicant. So also as per the say filed by the State CID, they have no objection if the property is returned to the applicant. The other accused persons excluding the respondent Nos.10 and 11 had given their no objection to hand over the said property to the applicant. So also the complainant had also given no objection to hand over the said property to the applicant. However, the learned Magistrate rejected the application for return of property to the applicant.

7. The main reason for rejecting the application by the learned Magistrate was that the description of the property did not tally with the description which appears in the complaint. As per the applicant, the

property was purchased by M/s. M.P. Bullions from Amrapali Industries Ltd. by three bills dated 6.3.2000. The learned Magistrate has observed that the property mentioned in the said three bills is gold 'bars' whereas the property seized in the present case is gold 'biscuits'. The learned Magistrate has further observed that there is discrepancy in the description relating to the property. It is further observed that there must be some difference between bars and biscuits and hence, as the description of the property does not tally with one mentioned in the three bills, the property was not returned to the applicant.

8. It is an admitted fact that the weight of each of the gold biscuits is about 100 gms. In such case the size of gold biscuits and gold bar is not very large in size. In such case the same property may be called gold biscuits or gold bars. It has clearly been mentioned in the complainant that the complainant and the applicant were travelling together. They were in possession of gold biscuits and the said gold biscuits were robbed. It is also an admitted fact that the respondent Nos. 10 and 11 are the receiver of the said stolen property. Looking to the fact that they are accused persons in the said case, I am not inclined to return the property to them i.e. the respondent Nos. 10 and

11.

9. Looking to the fact that the police and the other accused persons and the complainant have given their no objection for returning the property to the applicant and taking into consideration the documents produced by the applicant, I am inclined to return the property to the applicant pending the trial in the said case.

10. The property i.e. the 20 gold biscuits be returned to the applicant on the following conditions:-

i) That the applicant and his proprietor i.e. Keshav Kumar Bhagwandas Nachani of M/s. M.P. Bullion, Ahmedabad, to execute a bond jointly in the sum of Rs.12,00,000/- (Rupees Twelve lakhs only) on usual terms and conditions with further condition that they would be jointly and severally liable to pay the amount of the bond in case they commit breach of the said bond;

ii) The applicant and M/s. M.P. Bullion shall not dispose of the said property

or melt it or alienate the said property or create any third party interest in the said property; and

iii) The property shall be produced by them as and when required by the investigating agency as well as the Court.

11. This order is subject to the final order passed by the trial Court after the conclusion of the trial.

12. Application is disposed of.

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